

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 01-0123
Indiana Gross Income Tax
For the Years 1997 and 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Income Received from Computer Service Maintenance Contracts – High Rate Gross Income Tax.

Authority: IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(a)(2); IC 6-2.1-2-2(b); IC 6-2.1-2-3; IC 6-2.1-2-4; IC 6-2.1-2-4(4); IC 6-2.1-2-5; 45 IAC 1-1-121.

Taxpayer argues that the Department of Revenue (Department) erred when it determined that money taxpayer received from entering into and performing service maintenance agreements with Indiana customers was subject to Indiana's gross income tax at the high rate.

STATEMENT OF FACTS

Taxpayer is an out-of-state business which sells, installs, and services computer memory and computer peripherals. Along with selling computer equipment, taxpayer offers customers maintenance contracts for service work only. Taxpayer received money from service contracts with Indiana customers.

The Department conducted an audit review of taxpayer's business records and tax returns. The final audit report concluded that taxpayer owed Indiana gross income tax on the money received from the service contracts with Indiana customers. The tax was assessed at the high rate.

On December 5, 2000, taxpayer submitted a protest letter challenging the assessment of gross income tax at the high rate. Despite repeated requests to do so, taxpayer declined the opportunity to take part in an administrative hearing or to supply additional information supplementing the initial protest letter. Accordingly, this Letter of Findings was written based upon the information contained with the audit report and within taxpayer's original December 2000 protest letter.

DISCUSSION

I. Income Received from Computer Service Maintenance Contracts – High Rate Gross Income Tax.

IC 6-2.1-2-2(a)(1) imposes a gross income tax on the “entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana” The gross income tax is also imposed on a non-resident taxpayer who receives “gross income derived from activities or businesses or any other sources within Indiana” IC 6-2.1-2-2(a)(2). The gross income tax is imposed at two rates, a “high rate” of 1.2 percent and a “low rate” of .3 percent. IC 6-2.1-2-3 “The rate of tax is determined by the type of transaction from which the taxable gross income is received.” IC 6-2.1-2-2(b). The receipts from wholesale sales and from selling at retail are taxed at the low rate. IC 6-2.1-2-4. Receipts from service activities and certain other business activities are taxed at the high rate. IC 6-2.1-2-5.

The issue is whether the money received from entering into maintenance contracts for the performance of services is subject to Indiana’s Gross Income Tax at the high rate.

45 IAC 1-1-121 (in effect at the time taxpayer received money from these service contracts) provides in relevant part as follows. “Gross income derived from the performance of a contract or service within Indiana is subject to gross income tax.”

From the information available, it is apparent that the service contracts here at issue were just what they say; these contracts were arrangements by which taxpayer agreed to provide computer services to Indiana customers. These agreements do not include the provision of parts and equipment which would have potentially brought the agreements with the “selling at retail provision” found in IC 6-2.1-2-4(4). Because the service contracts were for the unalloyed provision of computer services, the money received from these agreements does not fall under the “low rate” provisions of IC 6-2.1-2-4.

Therefore, because the income received was attributable to services provided for Indiana customers, that income is subject to imposition of the state’s gross income tax at the high rate as provided for under IC 6-2.1-2-4(4), IC 6-2.1-2-5, and 45 IAC 1-1-121.

FINDING

Taxpayer’s protest is respectfully denied.